

**General Fabrication Corporation and Local Union
No. 2047, International Brotherhood of Electrical
Workers, AFL-CIO. Case 18-CA-6680**

July 27, 1981

DECISION AND ORDER

On February 10, 1981, Administrative Law Judge John J. Mathias issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,¹ and conclusions² of the Administrative Law Judge and to adopt his recommended Order, except as modified herein.³

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, General Fabrication Corporation, Forest Lake, Minnesota, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1(d):

"(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act."

2. Substitute the attached notice for that of the Administrative Law Judge.

¹ In affirming the Administrative Law Judge, we place no reliance on his finding that Respondent's mere citation of *Hudco-Tiffin, a Division of A-T-O, Inc.*, 198 NLRB 820 (1972), was a "tacit admission" of union animus on its part.

² Member Jenkins would award interest on the backpay due in accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980).

³ Based on the facts as found by the Administrative Law Judge, we find that the issuance of a broad cease-and-desist order is not warranted here. Respondent has not shown a proclivity to violate the Act nor are its unfair labor practices so egregious as to require broad injunctive relief. Therefore, only a narrow order is necessary to remedy the violations as found herein. Accordingly, we shall modify the Administrative Law Judge's recommended Order.

APPENDIX

**NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we

have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT threaten our employees with layoffs, or other economic sanctions, or lay off employees because Local Union No. 2047, International Brotherhood of Electrical Workers, AFL-CIO, files grievances to assist you in enforcing the terms and conditions of employment required by the collective-bargaining agreement signed by us.

WE WILL NOT refuse to assign assemblers work in the general labor classification because Local 2047 filed a grievance concerning the hourly rate to be paid assemblers who perform general labor work.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

WE WILL make whole, with interest, those employees laid off on May 7, 1980, including Elizabeth Sparrow, for any loss of wages or benefits that they may have suffered as a result of the discrimination against them. Employees will be recalled to work on the basis of seniority, as outlined in our contract with the Union, at such time as our business increases so that we can begin to recall employees laid off due to the lack of customer demand.

GENERAL FABRICATION CORPORATION

DECISION

STATEMENT OF THE CASE

JOHN J. MATHIAS, Administrative Law Judge: This case was heard before me on December 8, 1980, at Minneapolis, Minnesota. The General Counsel's complaint alleged that General Fabrication Corporation (hereafter Respondent) violated Section 8(a)(1) and (3) of the National Labor Relations Act (hereafter the Act), in that said Respondent, through the acts and statements of its personnel manager, James G. Fox, did interfere with, coerce, and restrain employees in the exercise of protected rights by threatening to lay off employees and by laying off two employees, Carol Dahlberg and Elizabeth Sparrow, because of, and in retaliation for, the filing of a grievance by the Union.

Respondent denies the allegations of the complaint. It alleges that the actions and statements of Fox were not coercive and were no more than acceptance of the terms of employment insisted upon by the Union. It alleges that the statements concerning the possibility of layoffs and the subsequent layoffs were the natural economic consequences of the settlement of the Union's grievance

by assigning certain disputed work to the general labor class of employees.

Upon consideration of the entire record and the briefs, and my observation of the witnesses and their demeanor, I make the following:

FINDINGS OF FACT

I. JURISDICTION

By its answer Respondent admits jurisdiction. Respondent is a Minnesota corporation with an office and place of business in Forest Lake, Minnesota, where it is engaged in the manufacture of computer components. During the 12-month period ending December 31, 1979, Respondent purchased and received at its Forest Lake, Minnesota, facility products, goods, and materials valued in excess of \$50,000 directly from points outside the State of Minnesota. At all times material herein, Respondent has been an employer within the meaning of Section 2(2) of the Act, engaged in commerce and in operations affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. LABOR ORGANIZATION

Respondent also admitted in its answer that Local Union No. 2047, International Brotherhood of Electrical Workers, AFL-CIO (hereafter the Union), is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. Background

General Fabrication Corporation has two plants, located at Forest Lake and Pine City, Minnesota, respectively. It is engaged in the business of producing printed circuit board and doing job shop assembly of electronic devices. The two plants are encompassed in a collective-bargaining agreement with the Union. The current collective-bargaining agreement, which was effective April 1, 1978, and continues in effect until March 31, 1981, is a first contract following the organizing of Respondent by the Union. That contract enumerates a number of different classifications of workers, including the two involved in the present case, i.e., general labor and assemblers, and sets out their wage rates and other benefits and details of employment. The contract does not, however, contain job descriptions for each classification of employees. The omission of written job descriptions from the contract is due to the preference of Respondent. It has resisted the efforts of the Union to have it provide such job descriptions. The understanding of the contracting parties, Respondent and the Union, is that any work performed by a particular classification of worker prior to the time the contract was ratified would remain the job of that class of worker as identified in the contract.

In or about August 1979 the union representative, Lila Anna Bonacorda, received complaints from employees in the assembler classification at Respondent's Forest Lake plant that they were doing work historically assigned to general laborers (a classification of workers receiving higher pay than assemblers), but were not receiving the

general labor rate of pay when they did such work. Shortly thereafter, Bonacorda contacted Fox, the personnel manager of Respondent, and informed him that the work in question (sanding and airbrushing) was the work of general laborers and that when assemblers were assigned to do such work they should be paid at the higher wage of the general labor classification.¹

The union representative had a number of conversations and meetings with Fox, concerning this topic, during the period August 1979 through April 1980. On May 2, 1980, following its failure to obtain pay adjustments for the assemblers for their sanding and air brushing work, the Union filed a grievance stating that work performed on the sanding machine and air blowing operation falls under the general labor classification and demanding that all assemblers who had been assigned and who had performed these operations be paid backpay for all hours worked in such operations. On May 5, 1980, Respondent took the following actions:

First, it informed the Union by letter that the sanding machine and air blower/brushing operations would be classified general labor work and that this would result in the permanent loss of one or more jobs in the assembler classification. It also noted the possibility that other assemblers might be put on reduced working hours and promised to compute backpay for those assemblers who had been working in these operations.

Second, it posted a notice at the Forest Lake plant that two employees, Carol Dahlberg and Elizabeth Sparrow, would be laid off as of 4:30 p.m., May 7, 1980. The notice stated that such layoff was the result of a union demand "that certain operations are to be performed by General Labor." (G.C. Exh. 9.)

Third, it informed the Union by separate letter that Elizabeth Sparrow and Carol Dahlberg were being permanently laid off "due to the Union demand" (G.C. Exh. 4.)

It is now Respondent's contention that the work in question was "fill work" which it had traditionally assigned to either class of workers based on availability and that, if the higher wage must be paid, it made economic sense to restrict such work to the general labor classification and save money through the elimination of assembler positions which would thus become unnecessary. It is the contention of the General Counsel and the Union that Respondent's actions on May 5, 1980, and a prior statement by Fox in late April 1980 that Respondent would have to reduce the assembler work force if the Union persisted in its demands, were attempts to coerce the Union and Respondent's employees from pursuing grievance procedures under the contract, in violation of Section 8(a)(1) of the Act, and that the layoffs were in retaliation for the Union's invocation of the grievance procedure, in violation of Section 8(a)(3) of the Act.

¹ Airbrushing (blowing) consists of brushing the printed circuit board with a vacuum machine. Sanding consists of placing the printed circuit board on a conveyor belt on a sanding machine and removing the board from the belt after completion of the sanding process.

B. The Issue

The central issue in this case is whether Respondent's reaction to the Union's grievance was solely motivated by economic factors, or was motivated by retaliation for union activities. As explained below, I find that the evidence indicates that Respondent's actions were primarily retaliatory and that such actions constituted violations of Section 8(a)(1) and (3) of the Act.

C. The Facts

As noted above, the dispute which underlies this matter stewed for approximately 9 months before boiling over in early May 1980. It is now undisputed that during this entire time the Union never demanded that the work in question (air blowing and sanding) be performed only by general labor. All that was demanded was that when the assemblers did this work they be paid the higher wage. Yet, Respondent clearly and unequivocally contended, up to the time the complaint was filed herein, that its decision to restrict such work to general labor was "due to the Union demand . . ." that such work be performed by general laborers. (See, e.g., G.C. Exhs. 4 and 9.)² The evidence shows that the Union never made such a demand.

It was expressly disavowed by Fox in his testimony that there was any economic necessity for the layoffs of Elizabeth Sparrow and Carol Dahlberg as of May 5, 1980. Now, however, it is argued in Respondent's brief that the justification for its threats of layoffs and the ultimate layoffs was an economic one.³ This is undoubtedly due to Fox's admissions on the stand that the Union had never demanded that assemblers not be assigned to the air blowing and sanding tasks. These admissions refute the originally claimed basis for Respondent's actions. Such contradictions, as well as other facts of record, lead me to conclude that Respondent's actions were retaliatory in nature.

The events surrounding the underlying dispute and Respondent's resolution thereof simply do not support Respondent's position. First of all, it must be kept in mind that this was the very first dispute between Respondent and the Union. The contractual relationship with the Union had begun on April 1, 1978, and this dispute reared its head in August 1979. Thus, the situation provided an opportunity to nip in the bud the use of the employees' grievance procedure under the union contract. The weight of the evidence shows that Respondent took such opportunity.

During the 9 months of negotiations between the union representative and Fox over extra pay for the performance of general labor work by the assemblers, it is Bonacorda's testimony that she was repeatedly informed that the situation had been rectified and that the assemblers were then being paid the higher wage for such

work. She testified that each time she later found out that this was not so. Fox denies that he ever said that the assemblers were being paid general labor rates for this work. The circumstances of this case lead me to credit Bonacorda's testimony over that of Fox. In the first place, his testimony reveals somewhat less than total recall of events about which he testified, especially the events surrounding his dealings with the Union between August and April 1979 and his later discussions with Carol Dahlberg.⁴ But more importantly, it is unbelievable to me that the union representative would have allowed this matter to pend for 9 months without invoking formal grievance procedures, unless she had some evidence that her discussions with Fox were bearing fruit. It is entirely consistent with her testimony that, after numerous assurances that the dispute had been resolved and numerous frustrations upon finding that this was not so, she finally resorted to the formal grievance procedure. Had she been informed in August 1979, or soon thereafter, that Respondent would not accede to her pay demands, or that Respondent would henceforth only assign this work to general laborers and consequently lay off one or more assemblers, this matter would have come to a head far earlier than May 1980.

One significance of this credibility finding is that Respondent was well aware of the real point at issue in the Union's demands—higher pay for the assemblers when they performed general labor work. However, even without such resolution of this credibility question, the record evidence clearly shows this is so. Fox's own testimony reveals this to be the case. He admits that the Union never demanded that only general laborers perform the air blowing and sanding work. He also does not deny that Bonacorda's requests were limited to the question of higher pay for the assemblers when they did such work. Thus, the main significance of my resolution of this credibility question is that it reflects on Respondent's good faith in its dealings with the Union on this question.

Another important factor in my decision is the manner in which Respondent raised the possibility of layoffs of assemblers. It is undisputed on the record that this possibility was not raised until late April 1980.⁵ The circumstances surrounding the raising of this point caused Bonacorda to inform Fox that she considered his statement to be a threat to the Union against pursuing the issue. In this regard, the union representative testified that in mid-April 1980 she met with Fox to discuss several issues, including the issue regarding assemblers doing general labor work. She informed him that she had discovered that the assemblers being assigned to the air blower and sanding operations still were not being paid the higher rate for such work. She again informed him that all she

² The Union had consistently urged that this work had always been general labor work. It did not insist at any time, however, that assemblers not be assigned to such work.

³ In actual fact there was only one person laid off—Elizabeth Sparrow. Dahlberg demanded and received her rights under the union contract to "bump" a worker with lesser seniority from another shift, as will be more fully explained below. Oddly enough, as will also be explained below, Resp. Exh. 4 reveals that no one was laid off in her stead.

⁴ Fox recalled having dealings with the Union concerning the disputed operations prior to May 1980, but did not recall any "specifics of the discussions."

⁵ This fact, coupled with Fox's testimony that business began to fall off in January 1980 adds significance to the prior assurances that assemblers were being paid general labor rates when they performed the air blowing and sanding operations. It might be inferred therefrom that Respondent waited for the opportune time to bring this dispute to a head: a time when it could retaliate by laying off assemblers without seriously affecting its workload.

was asking was "that they be paid the rate of pay while they perform the work." Fox did not respond at this time, but told her that he would get back to her on the various issues discussed at this meeting. About a week or week and a half later Fox called Bonacorda and told her that if the Union insisted on the general labor rate of pay for this work, he would have to reduce the assembler classification; that is, lay off some assemblers. At this point, Bonacorda informed him that she considered his statement to be a threat.

None of this testimony was disputed by Fox on the stand. It reveals that, after almost 9 months of stalling the Union on this disputed issue, Respondent then raised the question of layoffs for the first time and in a manner which suggested that it was threatening the Union with retaliation if it pursued its demands. It is notable that neither here nor in its later statements and writings addressed to the Union or the employees did Respondent refer to any economic compulsion for possible assembler layoffs. It simply threatened that pursual of the union demands would lead to such layoffs.

The other events of significance followed shortly thereafter. After receiving this response to its demands, the Union filed its formal grievance on Friday, May 2. On the same day a meeting was called of the assemblers during each shift at Respondent's Forest Lake plant.⁶ Fox informed the assemblers that because of the union grievance they would no longer be allowed to do the general labor work. He also informed them that there was a good chance that there would be layoffs as a result. He also informed them that if they did have to perform such work until more general laborers could be hired they would receive the higher pay.

On the following workday, Monday, May 5, 1980, Respondent posted its notice of layoffs and wrote two letters to the Union explaining its actions. The notice posted at the plant stated quite succinctly:

The following two employees will be laid off as of 4:30 p.m., May 7, 1980. This lay off is the result of a Union demand that certain operations are to be performed by General Labor.

Carol Dahlberg
Elizabeth Sparrow

A corresponding letter to the Union stated:

Please be advised that Elizabeth Sparrow and Carol Dahlberg will be permanently laid off *due to the Union demand and that Assembler classification work be re-classified as General Labor work.* [Emphasis supplied.]

Another letter to the Union of the same date stated:

⁶ There is some confusion on the record as to whether these meetings took place on Friday, May 2, or the following Monday, May 5. Dahlberg testified they occurred on May 2. Counsel for the General Counsel has confused the issue by referring to May 5 in his questioning of Fox. The circumstances surrounding the meetings, especially the content of Fox's prepared remarks (Resp. Exh. 2), lead me to accept May 2 as the proper date. However, my ultimate finding would not be affected if the meetings did take place the following Monday.

The Sanding machine, air blower/brushing operation will be classified General Labor work, which will result in the permanent loss of one or more jobs in the Assembler classification. Also, there is a possibility of others being put on reduced working hours due to the restrictions which this grievance places on the Assembler classification. Back pay is being computed for those who have been working in the area mentioned above.

This reaction, one working day after the filing of the grievance, is all the more remarkable when viewed in the light of Fox's contentions concerning the history of the disputed work. It was his testimony that the sanding and air blowing operations had been traditionally used as "fill work" for both the assemblers and general laborers and was not properly considered general labor work.⁷ Yet, despite this contention, his nearly instantaneous reaction was to abandon any attempt to argue this position in formal grievance procedures under the union contract and to lay off two employees, while making it quite plain that the layoffs were due *solely* to the union demand. Both in his contacts with the assembler employees and in his testimony, Fox clearly stated that the layoffs had no economic basis, and it was due solely to a union demand that the disputed work be performed only by general laborers. The timing and nature of this reaction to the union grievance show it to be retaliatory.

Other circumstances surrounding the layoffs also support this finding. The selection of Carol Dahlberg and Elizabeth Sparrow is unexplained on the record. According to strict seniority rules they should not have been the ones whose names were posted. Respondent's Exhibit 3 shows that there were seven employees junior to Dahlberg and two assemblers junior to Elizabeth Sparrow. While they were the junior employees on the first shift (7 a.m. to 3:30 p.m.), Fox admitted that the sanding and air blowing operations were not peculiar to the first shift. They were performed on all three shifts. The selection of two employees from the more desirable day shift, without any other explanation of record, can be interpreted as heightening the retaliatory nature of the response to the Union's grievance.⁸

Furthermore, Fox's later dealings with Dahlberg reveal some animus toward the Union. At a meeting with Fox on May 7, 1980, Dahlberg was accompanied by the union steward, Mary Luke. Upon entering Fox's office, Luke informed Fox that Dahlberg had requested her presence. Fox testily noted that "if that was the kind of games I [Carol Dahlberg] wanted to play, he would have to get his legal representative." This reaction reveals his annoyance with the Union at this point in time. In this regard, it should be noted that, in an earlier meeting with Fox, Carol Dahlberg had asked if she had bumping rights under the union contract and was in-

⁷ This contention is evidenced by the language of G.C. Exh. 4 which refers to "Assembler Classification work [being] re-classified as General Labor Work," as well as by Fox's testimony at the hearing.

⁸ It should be noted that the propriety of Respondent's selection of Carol Dahlberg and Elizabeth Sparrow for layoff, out of seniority, is not at issue in this proceeding. The only relevance here is the additional light it sheds on Respondent's motives.

formed that there were assemblers on the later shifts who were junior to her and Sparrow and that they could bump such junior employees if they so desired.⁹ The purpose of the meeting on May 7, the date the layoff was to be effective, was to determine whether Dahlberg had decided as of yet whether to exercise this option. Since Dahlberg had only been apprised of her rights in this regard after her earlier questioning, it is understandable that she would want the union steward's presence at this meeting. Fox's pique, therefore, was not a normal response to this situation and clearly indicates some animus toward the Union.¹⁰ In fact, Fox admitted during his testimony that it was not unusual for the union steward to be present during his meetings with employees.

One other suspicious circumstance exists concerning the posted layoffs. Elizabeth Sparrow elected not to bump another employee from a later shift and chose to accept the layoff. Carol Dahlberg, on the other hand, elected to bump and was transferred to the second shift. The record indicates, however, that no one was bumped off the second shift to make room for her. Respondent's Exhibit 4 has been introduced as a list of all assemblers laid off from May 8 through September 15, 1980. Elizabeth Sparrow's layoff is noted thereon, effective May 8. But no other assembler is listed as being laid off until June 13, 1980, and the later layoffs were due to declines in the workload at those times. This is further evidence that the layoffs were not a necessary consequence of the Union's demands.

Lastly, Fox's testimony reveals that he was quite aware that not only could assemblers continue to do the sanding and air blowing jobs in the future, but that they would do so. In his first comments to the assemblers, on May 2, he indicated that the assemblers might continue to do the work until he could hire more general laborers. Again, in his testimony, he indicated that, where the workload of the general laborers prohibited them from doing this work, he was still free to call upon the assemblers to do it, so long as he paid them the higher wage. Even in its brief, Respondent states: "Respondent was (and continues to be) free to assign this work to assemblers" Respondent's knowledge of this fact directly contradicts the reasons for the layoffs given to the assemblers and the Union in early May 1980.

Respondent's rebuttal to this chain of evidence is its argument that there was an economic basis for such layoffs, i.e., there was no economic reason to use the assemblers for this work if the general labor rate must be paid. It notes in support of this argument that no additional general laborers were hired as a result of the May 8 layoff. However, if the layoffs were due to this "economic" basis, Respondent certainly would have made such explanation to the Union and the employees at the

time of the layoffs. It did not. Rather, its justification was stated simply and clearly, at that time, as being the "Union demand" that the disputed operations be classified as general labor only. In fact, Fox admitted on the stand that what he was telling the employees in May was that the layoff was not due to a lack of work. Moreover, it is not established by evidence of record that on May 5 business had fallen off to the extent that Respondent knew that no extra general laborers would have to be hired to replace the laid-off assemblers. It is true that there were later layoffs of both general laborers and assemblers, beginning on June 13, 1980, but there is no evidence that those layoffs were envisioned on May 2. In fact, Fox testified that layoffs were rare at the Forest Lake plant before May 5, 1980, and he intimated to the day-shift assemblers at his meeting on May 2 that additional general laborers might be hired as the result of the alleged change in job classification. In any event, Respondent's admission, both at the time of the layoffs and during the hearings, that the layoffs were not based on an economic justification, refutes Respondent's position.

Accordingly, the weight of the evidence shows that Respondent's threats of layoffs and layoffs in May 1980 were in retaliation for the Union's invocation of legitimate grievance procedures and were intended to coerce or intimidate employees from the exercise of rights guaranteed under the Act and were therefore in violation of Section 8(a)(1) and (3) of the Act.

IV. DISCUSSION

Respondent cites several cases to support its contentions that the complained of practices were simply the necessary economic consequence of the Union's demands and not in violation of the Act. Each of the cited cases can be easily distinguished from the present case. First, it cites *Brady-Hamilton Stevedore Company*, 198 NLRB 147 (1972), as support for the proposition that when employees lose their jobs as the result of a union demand that their work be assigned to other employees, there is no violation of the Act. (Resp. br., p. 7). However, that case involved a dispute between two different unions as to whose members should perform a certain operation. The employer acceded to the one union's demands in order to continue its business operation. In the present case there is no such interunion dispute. In fact, Respondent knew full well that the Union, in this matter, did not insist that the work in question be assigned to only the general labor classification.

Respondent then cites *Cheshire Inn Motel Hotel, Inc. d/b/a Cheshire Lodge*, 193 NLRB 839 (1971), as being a case whose facts were "quite similar to the present case." In that case a bellman was laid off because the union demanded that certain duties should not be assigned to bellmen. The union was advised that the shift in duties would result in a reduction in force of bellmen and acquiesced in it. (*Cheshire Inn* at 842.) The subsequent layoff of one of the bellmen was shown by substantial evidence to have been due to his poor work habits and not because he had filed a grievance. There are substantial differences in the present case, where the Union specifically did not demand a shift in duties, did not acqui-

⁹ Under the process of "bumping," an employee with seniority who was to be laid off could demand the job of another employee in the same category who was junior to her on the seniority list. It is notable that such right was not mentioned by Fox until the question was raised by Dahlberg, according to the undisputed testimony of record.

¹⁰ Fox was unable to recall any details of his meeting with Dahlberg and the steward on May 7, but does agree that such a meeting took place. He does not recall making the statement concerning the steward's presence, but does not deny that he made it. Under the circumstances, I find no reason to discredit the testimony of Carol Dahlberg.

esce in the need for layoffs, and where the subsequent layoff was not founded on poor work performance, but was in retaliation for the invocation of the union grievance procedure.

Respondent also cited *Currin-Greene Shoe Manufacturing Company, Inc.*, 190 NLRB 600 (1971), as another case "bearing considerable similarity to the present case" In that case an employer and a union made a special arrangement to work a particular employee on a 20-hour per week part-time schedule, in derogation of a requirement of the union contract for a 40-hour week. Upon learning that the union contract provided for a guaranteed 40-hour week, the employee complained to the union. The employer explained to the union that it did not need a full-time employee in that position and would be forced to let the complaining employee go if he persisted in his grievance. The union, fully understanding this position, persisted in the grievance and informed the company president that the employee was only interested in full time employment. The union further indicated that its prior willingness to consider the special part-time arrangement had been based on the benefit to its member. It could not make a similar derogation of its contract for the benefit of the employer. Since the employee insisted on full-time employment under the contract, the union pressed its grievance. (*Currin-Greene* at 607.) Here again there are substantial differences from the present case. The union demanded a change in a special exception to the union contract which had previously been worked out with the employer because the employee insisted that such change be made. There was no such insistence on a change in the instant matter; Respondent was and still is aware that the Union has no objection to the work in question being assigned to assemblers.

Finally, Respondent cites *Hadco-Tiffin, a Division of A-T-O, Inc.*, 198 NLRB 820 (1972), as support for the proposition that an expression of irritation by an employer concerning the use of the grievance procedure by an employee was insufficient evidence that the employee's discharge was unlawfully motivated. (Resp. br., p. 9.) This reference is most notable for what it admits. That is, it is tacitly admitted that Fox did exhibit animus toward the Union at the time of the filing of the grievance and the layoffs. The show of pique in the instant case is far from the only indication of unlawful motivation. Therefore, the citation of *Hadco-Tiffin* is inappropriate. Furthermore, the Board's finding in the latter case, that the amicable relationship between the employer and the union was evidence that the discharge was not unlawfully motivated, has no parallel in the present matter. In *Hadco-Tiffin* there was a 10-year history of amicable relations between the employer and the union. There was no evidence of animus in the case of prior grievances. (*Id.* at 821.) In this case the employer-union relationship had only existed for about 2 years and there had been no prior grievances filed upon which a finding of general lack of animus could be based.

In the present matter, the weight of the evidence, as previously outlined, reveals that Respondent's statements and actions before and after the filing of the union grievance on May 2, 1980, were intended to coerce or intimi-

date employees from the exercise of their rights guaranteed under Section 7 of the Act and that the subsequent layoff of Elizabeth Sparrow was in retaliation for the Union's invocation of the grievance procedure. Under the principles enunciated in *Lloyd Well d/b/a Pere Marquette Park Lodge*, 237 NLRB 855 (1978) and *Walker Electric Co., Inc.*, 219 NLRB 481 (1975), such statements and actions must be considered violations of Section 8(a)(1) and (3) of the Act. I have so found.

CONCLUSIONS OF LAW

1. General Fabrication Corporation is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Local Union No. 2047, International Brotherhood of Electrical Workers, AFL-CIO, is and at all times material herein has been a labor organization within the meaning of Section 2(5) of the Act.

3. By threatening to lay off assemblers if the Union pursued a grievance concerning the hourly rate to be paid assemblers who performed certain general labor work (air blowing and sanding), Respondent interfered with, restrained, and coerced employees in the exercise of their Section 7 rights in violation of Section 8(a)(1) of the Act.

4. By refusing to assign assemblers to certain general labor work (air blowing and sanding), because the Union filed a grievance concerning the hourly rate to be paid assemblers who performed such work, Respondent interfered with, restrained, and coerced employees in the exercise of their Section 7 rights in violation of Section 8(a)(1) of the Act.

5. By laying off employee Elizabeth Sparrow and requiring another employee, Carol Dahlberg, to move to and bump someone from another shift, because the Union filed a grievance concerning the hourly rate to be paid assemblers who performed said general labor work, Respondent discriminated against employees in violation of Section 8(a)(3) and (1) of the Act.

THE REMEDY

Having concluded that Respondent has engaged in certain unfair labor practices, I will recommend that it cease and desist therefrom and take certain affirmative action, including making Elizabeth Sparrow and any other assembler who may have been laid off on May 7, 1980, whole for any loss of earnings they may have suffered during the period May 7 to June 13, 1980, and restore their seniority rights in the case of recalls to work as business increases.¹¹ Loss of earnings shall be comput-

¹¹ On June 13, 1980, Respondent laid off several assemblers for economic reasons. The employees referred to above would have been laid off on that date, if they had not been on May 7, 1980. Therefore, backpay is only due for this period. As noted in my findings, it does not appear that anyone other than Elizabeth Sparrow was laid off on May 7. However, in case there was an omission of a name on Resp. Exh. 4, my recommended remedy and Order will refer to any other employee who may have been laid off when Carol Dahlberg elected to exercise her seniority rights and bump an assembler on the second shift. Of course, since Carol Dahlberg was not laid off, no backpay is required for her.

ed as prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), plus interest as set forth in *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962), and *Florida Steel Corporation*, 231 NLRB 651 (1977).

Upon the above findings of fact, conclusions of law, and the entire record of the case, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER¹²

The Respondent, General Fabrication Corporation, Forest Lake, Minnesota, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening employees with layoffs or other economic sanctions because their Union filed grievances to assist them in enforcing the terms and conditions of employment required by a collective-bargaining agreement.

(b) Refusing to assign assemblers to the air blowing and sanding operations because their Union filed a grievance concerning the hourly rate to be paid assemblers who perform such general labor work.

(c) Laying off employees, or otherwise discriminating against them, because their Union filed grievances to assist them in enforcing the terms and conditions of employment required by a collective-bargaining agreement.

(d) In any other manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action:

¹² In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(a) Make whole Elizabeth Sparrow, and any other assembler who may have been laid off on May 7, 1980, for any losses suffered during the period May 7 to June 13, 1980, pursuant to the provisions set forth in "The Remedy" section above.

(b) Recall to work employees, including Elizabeth Sparrow and any other assembler who was laid off on May 7, 1980, on the basis of seniority, as outlined in the contract between Respondent and the employees' Union, at such time as business increases to the point where Respondent can begin to recall employees who were laid off due to lack of customer demand.

(c) Preserve and, upon request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Forest Lake, Minnesota, facilities copies of the attached notice marked "Appendix."¹³ Copies of said notice, on forms provided by the Regional Director for Region 18, after being duly signed by an authorized representative of Respondent, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 18, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

¹³ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."